Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1996

LIFE COLLEGE, INC.,

Petitioner,

vs.

WILLIAM C. MANGUM, JR., in his official capacity as Director of the Nonpublic Postsecondary Education Commission; STEPHEN DOUGHERTY, in his official capacity as Executive Director of the Nonpublic Postsecondary Education Commission; and the NONPUBLIC POSTSECONDARY EDUCATION COMMISSION,

Respondents.

Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

FRANK B. STRICKLAND
MARY M. BROCKINGTON
Attorneys for Petitioner
WILSON, STRICKLAND & BENSON, P.C.
SUITE 1100 ONE MIDTOWN PLAZA
1360 PEACHTREE STREET, N. E.
ATLANTA, GEORGIA 30309-3214
(404) 870-1800

67 pp

QUESTIONS PRESENTED FOR REVIEW

1. May a state, consistent with the Equal Protection Clause of the Fourteenth Amendment, single out one institution in a class of similarly situated institutions for disfavored treatment and financial burden when the action is not rationally related to a legitimate state interest and is based on animus toward the disfavored institution?

2. Does the Georgia Nonpublic Postsecondary Educational Institutions Act of 1990, as applied to Petitioner Life College, violate the Equal Protection Clause of the Fourteenth Amendment?

PARTIES TO THE PROCEEDING

Petitioner Life College, Inc. is a private, nonproprietary, non-profit college located and doing business in Marietta, Georgia. Life College was the Plaintiff in the lower court proceedings of this case and was the Appellant before the United States Court of Appeals for the Eleventh Circuit. There are no parent companies or non-wholly owned subsidiaries of Petitioner Life College, Inc. to be listed pursuant to Rule 29.6 of the Rules of the Supreme Court of the United States.

Respondent William C. Mangum, Jr., in his official capacity as Director of the Nonpublic Postsecondary Education Commission, was Director of the Nonpublic Postsecondary Education Commission at the time of the lower court proceedings of this case. He was a Defendant in the lower court proceedings and an Appellee before the United States Court of Appeals for the Eleventh Circuit.

Respondent Stephen Dougherty, in his official capacity as Executive Director of the Nonpublic Postsecondary Education Commission, was Executive Director of the Nonpublic Postsecondary Education Commission at the time of the commencement of the lower court proceedings of this case. He was a Defendant in the lower court proceedings and an Appellee before the United States Court of Appeals for the Eleventh Circuit.

Respondent Nonpublic Postsecondary Education Commission was a Defendant in the lower court proceedings of this case and was an Appellee before the United States Court of Appeals for the Eleventh Circuit.

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OPINIONS BELOW

On March 27, 1996, the United States District Court for the Northern District of Georgia, Atlanta Division issued its Order granting Respondent's Motion for Summary Judgment. That Order (1a) is not published. On October 9, 1996, the United States Court of Appeals for the Eleventh Circuit issued its opinion, affirming the decision of the District Court. That opinion (11a) is not published.

STATEMENT OF JURISDICTION

In the action which gave rise to this petition, Petitioner Life College, Inc. ("Life College") sought a declaratory judgment pursuant to 28 U.S.C. § 2201 and asked the United States District Court for the Northern District of Georgia to declare unconstitutional as in violation of the Fourteenth Amendment to the United States Constitution several provisions of the Nonpublic Postsecondary Educational Institutions Act of 1990, codified as amended at O.C.G.A. §§ 20-3-250.1 to -250.27. The District Court had jurisdiction over this matter pursuant to 28 U.S.C. § 1331 and 42 U.S.C. §§ 1983 and 1988.

The United States Court of Appeals for the Eleventh Circuit had jurisdiction pursuant to 28 U.S.C. §1291 to hear Life College's appeal from the March 27, 1996 Final Judgment of the District Court, which appeal was timely taken with the filing of Life College's Notice of Appeal on April 26, 1996.

This Court has jurisdiction pursuant to 28 U.S.C. §1254(1) to grant Life College's Petition for Certiorari from the October 9, 1996 Order of the Court of Appeals, which petition is timely filed.

STATUTES INVOLVED

U.S. Const. amend. XIV, § 1 provides:

> No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.

O.C.G.A. § 20-3-250.3(10) and (15) (1996), attached hereto at 15(a).

O.C.G.A. § 20-3-250-6(c) (1996), attached hereto at 20a.

O.C.G.A. § 20-3-250.27(c)(1)(1996), attached hereto at 25a.

STATEMENT OF THE CASE

Petitioner Life College, Inc. ("Life College") is a private, nonproprietary, nonprofit college located in Marietta, Georgia which was founded by Drs. Sid and Nell Williams in 1974. As of July, 1992, Life College had 3,810 students and 142 faculty members.

Since 1986, Life College has been accredited by the Commission on Colleges of the Southern Association of Colleges and Schools ("SACS"), a regional accrediting agency recognized by the United States Department of Education, which also accredits the University of Georgia, Georgia Institute of Technology, Emory University, Morehouse College, Morehouse School of Medicine, Mercer University, Georgia State University, Medical College of Georgia and other similar institutions. SACS classifies its accredited schools from Level I through Level VI, based on the highest degree awarded. Life College is a Level V college.

In 1990, the Georgia General Assembly enacted the Nonpublic Postsecondary Educational Institutions Act of 1990 (the "Act"), codified as amended at O.C.G.A. §§ 20-3-250.1 to -250.27. The Act created the Nonpublic Postsecondary Education Commission ("NPEC"), one of the Respondents herein, to regulate nonpublic postsecondary schools, and established certain requirements for such schools. In its original form, the bill which became the Act subjected all nonpublic, postsecondary schools to the same level of regulation. However, during the legislative process many exemptions intended to apply to particular schools were written into the Act.

Life College is purportedly exempt from the Act under O.C.G.A. § 20-3-250.3(a)(10).[1] However, the Georgia legislature negated Life College's exemption at O.C.G.A. § 20-3-250.6(c)[2] and with the 1992 amendment to O.C.G.A. § 20-3-250.10A(c)(1), now codified as amended at O.C.G.A. § 20-3-250.27(c)(1).[3] In 1992, the Georgia legislature enacted a new category, O.C.G.A. § 20-3-250.3(a)(15),[4] which applies to Life College. However,

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[1]O.C.G.A. § 20-3-250.3(a)(10) exempts from the Act "any nonpublic, nonprofit college or university granting baccalaureate degrees whose principal office and campus are located in this state and its related graduate and professional programs, which have been in existence ten or more years as a non-public, non-profit college or university prior to July 1, 1989 and is accredited by a national or regional agency recognized by the United States Department of Education."

[2]O.C.G.A. § 20-3-250.6(c), as amended, provides, "In addition thereto, institutions otherwise exempt from the provisions of this part under paragraph (10) of subsection (a) of Code Section 20-3-250.3 shall be subject to the requirements of Code Sections 20-3-250.8, 20-3-250.10 and 20-3-250.27."

[3]O.C.G.A. § 20-3-250.10A(c)(1), as amended and presently codified at O.C.G.A. § 20-3-250.27(c)(1) provides, "Those postsecondary education institutions specified in paragraphs (10) and (15) of Code Section 20-3-250.3 . . . shall participate in the tuition guaranty fund."

[4]O.C.G.A. § 20-3-250.3(a)(15) exempts from the Act "[a]ny college or university that confers both associate and

even under this subsection, Life College is still required to (1) post a $200,000.00 bond and (2) contribute to the Tuition Guaranty Trust Fund, a fund which was set to be funded at $500,000.00 within five years.

Thus, the Act subjects Life College to certain requirements from which other schools with similar or lesser academic programs and accreditation are exempt. Of the five private Level V accredited colleges in Georgia, all but Life College are fully exempt from the Act. Life College is the only Level V institution required under the Act to pay into the Tuition Guaranty Trust Fund and to post a bond. Of the five non-exempt, degree-granting private colleges accredited by SACS, only Life College offers doctoral degrees. None of the remaining 113 non-exempt institutions is even accredited by SACS.

Thus, despite its longevity, its accreditation and its demonstrated financial stability, Life College is not exempt from the Act. Rather, Life College will remain in the same categories under the Act forever, without regard to the number of years it has been in existence, the percentage of students it graduates, or its financial soundness. As Respondent William C. Mangum, Director of the NPEC, explained, "Life College in a hundred years from now under the current Act will not be exempt."

Since 1991, Life College has posted its $200,000.00 bond and has made, under protest, its required contributions to the Tuition Guaranty Trust Fund,

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baccalaureate or higher degrees, that is accredited by the Southern Association of Colleges and Schools, College Division, that is operated in a proprietary status, that provides a $200,000.00 surety bond, and that contributes to the Tuition Guaranty Trust Fund pursuant to Code Section 209-3-250.27."

an amount totalling $139,865.41 of the total $500,000.00 in the fund. Thus, while Life College has funded nearly twenty-eight percent (28%) of this fund, exempt colleges, even those newer or less financially stable than Life College, will have made no contribution to the fund.

Respondents argue that the Act has three general purposes: (1) protection for students in the State of Georgia; (2) protection for other colleges or businesses which accept degrees from schools and colleges operating in the State of Georgia; and (3) protection for the taxpayers of the State of Georgia. Respondents also contend that the purpose behind both the classifications as set forth in the exemptions of O.C.G.A 20-3-250.3(a)(10) and (15), as applied to Life College, is that Life College needs more regulation because of "nepotism" at the college.

Prior to enactment of the Act, Dr. Janie Smith, former Coordinator of Private College and University Standards with the Department of Education, was asked to comment on the proposed legislation. Dr. Smith's comments, set forth in two memoranda, were critical of "nepotism" at Life College. This criticism was not based on any abuse or problems at Life College resulting from this so-called "nepotism." Neither Dr. Smith, the legislative research office nor Respondents ever conducted any investigation to determine the existence or extent of any alleged "nepotism" at Life College or any other school. Rather, the Georgia Legislature relied solely on Dr. Smith's unsubstantiated criticism, as set forth in her memoranda, in creating the exemption at O.C.G.A. § 20-3-250.3(a)(10) which was drafted to apply to two specific institutions, Life College and Savannah College of Art and Design.

During the twenty-two years Life College has been in existence, only nine persons related in any way to Drs. Sid and Nell Williams have ever worked for Life College, even part-time. These nine, out of a workforce of 700 full

and part-time employees, include: the Williams' former son-in-law Dr. Andrew Krantz, who taught at Life College for approximately eight years before marrying into the Williams' family; the Williams' daughter, Dr. Kimbrough-Williams, who has not worked at Life College since 1990; a grandniece and grandnephew who performed part-time clerical work as high school students; a niece with several years experience as a legal secretary, who works as a secretary while attending school; and a niece who worked part-time cleaning while attending school.

Life College filed its Complaint in the United States District Court for the Northern District of Georgia on November 12, 1992 requesting the District Court to declare unconstitutional three provisions of the Act. Life College asserted that the Act is unconstitutional as applied to Life College because it imposes upon Life College additional financial burdens that other schools similarly situated to Life College do not have to bear. Specifically, Life College requested the District Court to declare unconstitutional the third sentence of O.C.G.A. § 20-3-250.6(c) and the words "(10) and" in O.C.G.A. § 20-3-250.27(c)(1). Life College further requested a permanent injunction restraining the enforcement, operation and execution of the challenged provisions.

The District Court had jurisdiction over this matter pursuant to 28 U.S.C. § 1331 and 42 U.S.C. §§ 1983 and 1988.

During the course of the lawsuit, the NPEC determined that Life College would meet the requirements of the exemption set forth in O.C.G.A. § 20-3-250.3(a)(15). Although this exemption relieves Life College of certain reporting requirements, it still subjects Life College to the financial burdens of posting a bond and paying into the Tuition Guaranty Trust Fund. On November 23, 1993, Life College sought leave of court to file its Supplemental

Complaint challenging the constitutionality of that exemption as applied to Life College, which leave was granted on January 14, 1994.

On November 8, 1995, Respondents filed their Motion for Summary Judgment arguing that the statutory provisions which imposed financial burdens on Life College which other schools did not have to bear were imposed because of "nepotism" at Life College. On November 13, 1995, Life College filed its Motion for Summary Judgment. Life College maintained that the statute violates Life College's right of equal protection by subjecting it to restrictions and burdens that similarly situated schools do not have to bear. Life College emphasized that the statutory classification within which Life College falls has nothing to do with "nepotism" and that nowhere in the statute is "nepotism" mentioned, defined or addressed. Life College maintained that, therefore, the classification is not rationally related to the asserted governmental purpose of addressing "nepotism" at institutions in Georgia.

Finally, Life College argued that, to the extent there is evidence in the legislative history that the additional requirements were imposed upon Life College due to Life College's employment of persons related to its founders, Dr. Sid and Nell Williams, such evidence only serves to illustrate that the restrictions were motivated by impermissible animus toward Life College. Life College asserted that this motivation is further evidenced by Respondents' failure to investigate "nepotism" at any other school subject to the Act.

On March 27, 1996, the District Court issued its Order denying Life College's Motion for Summary Judgment and granting Respondents' Motion for Summary Judgment. In its Order, the District Court upheld the statute as applied to Life College. While conceding that the statute itself does not address "nepotism," the District Court determined that,

because there was evidence of legislative concern about "nepotism" at Life College, the classification that subjects Life College to these additional burdens could be rationally related to achieving the purpose of protecting students against "nepotism" at Life College.

On, July 17, 1996, Life College appealed the District Court's Order to the United States Court of Appeals for the Eleventh Circuit. The Court of Appeals had jurisdiction to hear Life college's appeal pursuant to 28 U.S.C. § 1291. On October 9, 1996, the Court of Appeals entered an Order summarily affirming the District Court's Order.

Life College respectfully requests this Court to grant certiorari to determine the constitutionality of a statutory classification which bears no rational relationship to any legitimate governmental interest.

REASONS FOR GRANTING THE WRIT

I. CERTIORARI SHOULD BE GRANTED BECAUSE THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT HAS DECIDED AN IMPORTANT FEDERAL QUESTION IN A WAY THAT CONFLICTS WITH RELEVANT DECISIONS OF THIS COURT, AND A REVIEW BY THIS COURT IS NECESSARY TO CLARIFY THE EQUAL PROTECTION CLAUSE'S MANDATE FOR A RATIONAL RELATIONSHIP BETWEEN STATE ACTION AND A LEGITIMATE STATE PURPOSE.

A. THERE IS NO LEGAL OR FACTUAL RELATIONSHIP, RATIONAL OR OTHERWISE, BETWEEN THE NONPUBLIC POSTSECONDARY EDUCATIONAL INSTITUTIONS ACT OF 1990, AS APPLIED TO PETITIONER LIFE COLLEGE, AND

NEPOTISM OR ANY OTHER LEGITIMATE PURPOSE.

Respondent NPEC has failed to show any relationship, rational or otherwise, between the burdens imposed upon Petitioner Life College by the Nonpublic Postsecondary Educational Institutions Act of 1990 and a legitimate state purpose. The Act violates Life College's constitutional rights under the Equal Protection Clause in that the additional burdens for which the Act singles out Life College are not rationally related to the state's purported goal of regulating "nepotism" at post secondary educational institutions.

The Court has instructed that the constitutional guarantee of equal protection is "essentially a direction that all persons similarly situated should be treated alike." City of Cleburne v. Cleburne Living Ctr., 473 U.S. 432, 439 (1985). Where groups are similarly situated, the general rule is that legislation will be sustained if the classification drawn by a statute is rationally related to a legitimate state purpose. Romer v. Evans, ___ U.S. ___, 116 S.Ct. 1620, 1627 (1996). However, if the classification is not rationally related to a legitimate state purpose, then it must be struck down. Romer, 116 S.Ct. at 1629.

The effect of the Act, as applied to Life College, has been to require Life College alone, among all the Level V SACS accredited schools in Georgia, to post a bond and to pay more than $139,865.41 into the Georgia Tuition Guaranty Trust Fund over the past five (5) years.

It is undisputed that Life College is similarly situated to other schools which are classified as "exempt" under the

other provisions of O.C.G.A. § 20-3-250.3.[5] These exempt schools are not required either to undergo extensive, burdensome regulation or to make payments into the Tuition Guaranty Trust Fund.

The only purpose the NPEC has offered for the classification which requires Life College to post a bond and pay into the Tuition Guaranty Trust Fund is that the classification is designed to address "nepotism" at Life College. Thus, the NPEC contends, "nepotism remains a rational basis for legislative action, no matter the actual provisions of the Act challenged."

While the rational basis standard of review requires the lowest level of judicial scrutiny, it is well-established that to be rational, a classification "must find some footing in the realities of the subject addressed." Heller v. Doe, ___U.S.___, 113 S.Ct. 2637, 2643 (1993). In City of Cleburne v. Cleburne Living Ctr., 473 U.S. 432 (1985), the Court held that a "[s]tate may not rely on a classification whose relationship to an asserted goal is so attenuated as to render the distinction arbitrary or irrational." City of Cleburne, 473 U.S. at 446. More recently the Court instructed:

> [E]ven in the most ordinary equal protection case calling for the most deferential of standards, we insist on knowing the relation between the classification adopted and the object to be attained. The search for the link between the classification and objective gives substance to the Equal Protection Clause; it provides guidance and discipline

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[5]Such "similarity" is evidenced by any rational measure one chooses, whether it be (1) date in fact of accreditation; (2) level of degrees offered; (3) date of charter or years in existence; or (4) financial stability.

> for the legislature, which is entitled to know what sort of laws it can pass; and it marks the limits of our own authority.

Romer v. Evans, ___ U.S. ___, 116 S.Ct. 1620, 1627 (1996).

What then is the "link" between the classification and the regulation of "nepotism" at Georgia postsecondary institutions? Life College is subject to the requirements of the Act solely because Life College falls within the following category:

> Any nonpublic, nonprofit college or university granting baccalaureate degrees, whose principal office and campus are located in this state and its related graduate and professional programs, which have been in existence ten (10) or more years as a nonpublic, nonprofit college or university prior to July 1, 1989, and is accredited by a national or regional accrediting agency recognized by the United States Department of Education.

O.C.G.A. § 20-3-250.3(a)(10) (1996).

It is this classification, combined with O.C.G.A. § 20-3-250.6(c)(1)[6], which subjects Life College to discriminatory treatment.

The classification has nothing to do with "nepotism" in postsecondary schools. Indeed, the requirements imposed on those institutions under O.C.G.A. § 20-3-250.3(a)(10) and (15) in no way advance this purpose since

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[6]O.C.G.A. § 20-3-250.6(c)(1) requires institutions falling within subparagraphs (a)(10) and (a)(15) to post surety bonds and pay into the Tuition Guaranty Trust Fund.

they have absolutely nothing to do with "nepotism." "Nepotism" is neither mentioned nor implied, directly or indirectly, anywhere in the Act.

The classifications define a school by virtue of its accreditation status and location of its principal office and campus, and length of time in existence, not by level of "nepotism." Indeed, a school subject to the requirements imposed by subparagraphs (a)(10) or (a)(15) is subject to the additional burdens regardless of whether that school employs individuals who are related to one another in its faculty or administration. Conversely, a school could have an administration composed entirely of related members, but because it does not fall within the classifications set forth, it would not have to pay into the Tuition Guaranty Trust Fund.[7]

The classification does not impact "nepotism" at schools in Georgia, and "nepotism" at a school does not impact the application of the Act. There is simply no relationship between the classification and any legitimate purpose.

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[7]Certainly, had the Georgia legislature truly determined to regulate "nepotism," it could have addressed the issue. The Act is fairly comprehensive with respect to what is required of the regulated institutions. For instance, O.C.G.A. § 20-3-250.6 sets forth extensive minimum standards for educational institutions, including standards that apply to faculty and staff. One specifically provides that "the chief executive officer, trustees, directors, owners, administrators, supervisors, staff and instructors are of good reputation and character . . ." O.C.G.A. § 20-3-250.6(J). "Nepotism" is nowhere mentioned.

B. THE NONPUBLIC POSTSECONDARY EDUCATIONAL INSTITUTIONS ACT OF 1990, AS APPLIED TO PETITIONER LIFE COLLEGE, IS VASTLY UNDERINCLUSIVE SUCH THAT IT LACKS A RATIONAL RELATIONSHIP WITH ANY LEGITIMATE PURPOSE.

A statutory classification which is so vastly underinclusive that it cannot be rationally related to an asserted state goal must be struck down. See City of Cleburne v. Cleburne Living Ctr., 473 U.S. 432, 449-50 (1985). In City of Cleburne, the Court inquired whether the City could require an operator of a group home for mentally retarded residents to obtain a special use permit when such a permit was not required for other multiple dwellings, apartment houses and boarding and lodging houses. The City asserted, *inter alia*, that the special permit requirement advanced the legitimate interest of maintaining a 500 year flood plain. The Court rejected the argument, finding that, "[t]his concern with the possibility of a flood, however, can hardly be based on a distinction between the Featherston home and, for example, nursing homes, homes for convalescents for the aged, or sanatoriums or hospitals, any of which could be located on the Featherston site without obtaining a special use permit." City of Cleburne, 473 U.S. at 449.

The Court similarly rejected the City's purported doubts about the legal responsibility for the mentally retarded residents' actions and concerns about overcrowding, concentration of population, congestion of streets, and fire hazards. Those concerns, the Court held, "failed rationally to justify singling out a home such as 201 Featherston for the special use permit, yet imposing no such restriction on the many other uses freely permitted in the neighborhood." City of Cleburne, 473 U.S. at 450; see also Burstyn v. City of Miami Beach, 663 F. Supp. 528,

533 (S.D. Fla. 1987) ("Where, however, the means used to carry out a legitimate goal are grossly underinclusive, the means are too attenuated to be rationally related to that goal.")[8]; compare Penn Central Transp. Co. v. City of New York, 438 U.S. 104, 134-35 (1978) (holding that petitioners were not "solely burdened" by zoning law which applied to "vast number of structures in the city" such that law violated Fifth and Fourteenth Amendment due process protection).

Similarly, singling out Life College for payment into the Tuition Guaranty Trust Fund, yet imposing no such requirement on any of the exempt schools, none of which are prohibited by the Act from employing related persons, is at best vastly underinclusive and, therefore, not rationally related to the purported goal of protecting against "nepotism." Here the restrictions imposed because of alleged "nepotism" are imposed only on Life College and one other school. Such means are vastly underinclusive considering there are hundreds of postsecondary institutions in Georgia.

Respondent NPEC admits that it never made any request to any institution exempt from the Act for

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[8]In Burstyn, the United States District Court for the Southern District of Florida determined that, whereas the goal of fire protection was clearly a legitimate governmental interest, an ordinance that imposed a four-story height restriction only on adult congregate living facilities was "vastly underinclusive" and therefore too attenuated to be rationally related to this purpose. In so holding, the District Court expressly followed this Court's guidance in City of Cleburne and Metropolitan Life Ins. Co. v. Ward, 470 U.S. 869 (1985), and carefully inquired into the relationship between the legislative goal and means. Burstyn, 663 F. Supp. at 533 & n.1.

information about the identity and number of relatives of the president, trustees, officers or their spouses, employed for any period of time by the institution. The NPEC provided absolutely no evidence regarding practices at other schools. In fact, the classification which subjects Life College to stricter requirements is based upon characteristics which have nothing to do with any alleged "nepotism."

Accordingly, even if the Court were to determine that the restrictions in some way advance the goal of regulating "nepotism" at postsecondary institutions, the classification is vastly underinclusive since it leaves unaddressed all other schools, and must be set aside as violative of Life College's right to equal protection.

C. THE GEORGIA LEGISLATURE HAS ACTED WITH A TYPE OF ANIMUS TOWARD PETITIONER LIFE COLLEGE THAT IS FORBIDDEN BY EVEN THE MOST MINIMAL EQUAL PROTECTION CLAUSE SCRUTINY.

The Court has recently held that legislation which imposes an "undifferentiated disability on a single named group" is both exceptional and invalid. Romer v. Evans, ___ U.S. ___, 116 S.Ct. 1620, 1627 (1996). In Romer, the Court held that Colorado's constitutional amendment prohibiting all government action designed to protect homosexuals from discrimination violated the equal protection clause. The Court found particularly offensive that the amendment singled out a certain class of citizens for disfavored treatment. The Court reasoned that the amendment was "at once too narrow and too broad . . . [in that it identified] persons by a single trait and then denie[d] them protection across the board." Romer, 116 S.Ct. at 1628. The Court held that such "indiscriminate imposition"

of a legislative burden violates the Equal Protection Clause. Romer, 116 S.Ct. at 1628 (quoting Sweatt v. Painter, 334 U.S. 1, 22 (1950)) (alterations in original).

That Life College was singled out for inclusion under the Act further establishes the unconstitutionality of the Act. Like the challenged amendment in Romer, the Act "is a status-based enactment, divorced from any factual context from which we could discern the relationship to legitimate state interests; it is a classification of persons undertaken for its own sake, something the Equal Protection Clause does not permit. '[C]lass legislation . . . [is] obnoxious to the prohibitions of the Fourteenth Amendment . . . .'" Romer, 116 S.Ct. at 1629 (quoting Civil Rights Cases, 109 U.S. 3, 24 (1883)). As the Court has instructed, the requirement of a rational relationship between the legislative classification and an independent and legitimate governmental goal insures the legislation was not enacted solely to disadvantage the affected group. Romer, 116 S.Ct. at 1627-28 (citing United States R.R. Retirement Bd. v. Fritz, 449 U.S. 166, 181 (1980) (Stephens, J., concurring) ("If the adverse impact on the disfavored class is an apparent aim of the legislature, its impartiality would be suspect.").

No such relationship exists in the present case as the record shows that the burdens imposed upon Life College by the classification under the Act are the result of animus. The record shows that the limited "exemption" set forth in O.C.G.A. § 20-3-250.3(a)(10) was specifically intended to apply to Life College. However, Respondents admit that they never conducted any investigation regarding "nepotism" at Life College or any other institution. Rather, the Georgia legislature relied on unfounded and unsubstantiated fears contained in the two memoranda prepared by Dr. Janie Smith. Dr. Smith herself admitted that her fears was not based on any abuse or problem at Life College.

Similarly, as in Romer, the classification under the Act is both too narrow and too broad. It is too narrow because it pertains only to Life College and one other school. The classification will continue to apply to Life College regardless of the existence or absence of any "nepotism" at Life College. Those schools which are exempt from the Act will continue to be exempt, regardless of the existence or absence of any "nepotism" at those schools. The classification is too broad because Life College will never be exempt from the Act, now or one hundred years from now, despite the existence or absence of any "nepotism."

This is not a case where the legislature has merely failed to articulate its reasons for enacting a statute. See e.g., Federal Communications Comm'n v. Beach Communications, Inc., ___ U.S. ___, 113 S.Ct. 2096, 2102 (1993). In Beach Communications, the Court upheld legislation requiring cable television systems to be franchised, but exempting facilities which served subscribers living in multiple-unit dwellings under common ownership. The Court reasoned that the common ownership classification was rationally related to the government's cost/benefit concerns and interest in regulating against monopolies. Beach Communications, 113 S.Ct. at 2103-04.

The classification under the Act, however, does not regulate based on common characteristics or attributes which affect the schools' impact on the welfare of students. See Beach Communications, 113 S.Ct. at 2103. Rather, as Respondents admit, O.C.G.A. §20-3-250.3(a)(10) was intended to apply to two (2) specific colleges, one being Life College. The Act does not impose additional burdens on Life College because of nepotism at the school, but rather, because Life College is Life College.

In addition, the Act leaves Life College without any means of ever enjoying exempt status.[9]

The classification which subjects Petitioner Life College to discriminatory treatment under the Act bears no rational relationship to the purported state purpose of protecting students against schools which practice "nepotism," is vastly under inclusive, and was based on animus toward Life College. The provisions of the Act which impose undue financial burdens on Life College must be struck down.

CONCLUSION

Because there exists no rational relationship between Respondents' stated purpose, or any legitimate purpose, and O.C.G.A. § 20-3-250.3(a)(10) and (15), O.C.G.A. § 20-3-250.6(c) and O.C.G.A. § 20-3-250.27 as applied to Life College, the Court should grant certiorari so that the offending portions of these provisions can be struck down as violative of Life College's equal protection

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[9]Respondent William C. Mangum explained, "Life College in one hundred years from now under the current Act will not be exempt."

rights and the judgment of the District Court and the Court of Appeals may be reversed.

Respectfully submitted,

Frank B. Strickland
Mary M. Brockington
Attorneys for Petitioner Life College, Inc.
WILSON, STRICKLAND & BENSON, P.C.
One Midtown Plaza, Suite 1100
1360 Peachtree Street, N.E.
Atlanta, Georgia 30309
(404) 870-1800

APPENDIX A - DECISION OF THE UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF GEORGIA, ATLANTA DIVISION
FILED: MARCH 27, 1996

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

LIFE COLLEGE, INC.,	:	
Plaintiff,	:	CIVIL ACTION
v.	:	1:92-cv-2654-MHS
WILLIAM C. MANGUM, JR., in his official capacity as Director of the Nonpublic Postsecondary Education Commission, et al.,	:	
Defendants.	:	

ORDER

This action for declaratory and injunctive relief is before the Court on cross-motions for summary judgment. For the reasons set out below, the Court denies plaintiff's motion for summary judgment and grants defendants' motion for summary judgment.

Factual Background

Plaintiff is a private college located in Marietta, Georgia, which offers baccalaureate degrees in nutrition and business, a masters degree in sports health science, and a

doctorate in chiropractic. Plaintiff is accredited by the Commission on Colleges of the Southern Association of Colleges and Schools (SACS), which also accredits five other Georgia schools in plaintiff's classification.[1] All but one of these schools are, like plaintiff, private colleges that received accreditation after 1983. Unlike plaintiff, however, all of these schools are fully exempted from the requirements of the Nonpublic Postsecondary Educational Institutions Act of 1990, as amended (the Act). O.C.G.A. § 20-3-250.1 *et seq.*

Among other things, the Act requires nonexempt institutions (1) to apply to defendant Nonpublic Postsecondary Education Commission (NPEC), which administers the Act, for authority to operate, O.C.G.A. § 20-3-250.8; (2) to post a surety bond, O.C.G.A. § 20-3-250.10; and (3) to contribute to the state's Tuition Guaranty Trust Fund.[2] O.C.G.A. § 20-3-250.27. The Act, however, provides exemptions to fifteen different categories of institutions. O.C.G.A. § 20-3-250.3(a)(1)-(15). Of the five private Level V colleges accredited by

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[1] SACS classifies plaintiff as a Level V college, which includes an institution that awards three or fewer doctoral degrees. SACS also accredits the following other Level V colleges in Georgia: Columbia Theological Seminary, Institute of Paper Science and Technology, Interdenominational Theological Center, Medical College of Georgia, and Morehouse School of Medicine.

[2] The purpose of the Tuition Guaranty Trust Fund is "to enable [participating] institutions, collectively, to protect students against financial loss when a postsecondary educational institution closes without reimbursing its students and without completing its educational obligations to the students." O.C.G.A. § 20-3-250.27(a).

SACS in Georgia, all but plaintiff are fully exempt from the Act.

Plaintiff and one other institution in Georgia, the Savannah College of Art and Design, qualify for a limited exemption provided to

> any nonpublic, nonprofit college or university granting baccalaureate degrees whose principal office and campus are located in this state and its related graduate and professional programs, which have been in existence ten or more years as a nonpublic, nonprofit college or university prior to July 1, 1989, and is accredited by a national or regional accrediting agency recognized by the United States Department of Education.

O.C.G.A. § 20-3-250.3(a)(10). Institutions qualifying for this exemption, unlike other exempt institutions, must still comply with the requirements of O.C.G.A. §§ 20-3-250.8 (requiring application for authority to operate), 20-3-250.10 (requiring a surety bond), and 20-3-250.27 (requiring contributions to the Tuition Guaranty Trust Fund). O.C.G.A. §§ 20-3-250.6(c) and 20-3-250.27(c)(1).

Plaintiff filed this action challenging the constitutionality of those portions of the Act that subject it to requirements that are not imposed on other, allegedly similarly situated exempt institutions. Plaintiff sought a declaration that these provisions, as applied to it, violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution; a permanent injunction against enforcement of the provisions against it; and a refund of all fees it has paid thereunder, including all amounts it has paid into the Tuition Guaranty Trust Fund.

During the course of this litigation, defendant NPEC determined that plaintiff would also qualify for an

exemption under O.C.G.A. § 20-3-250.3(a)(15) if plaintiff posted a surety bond and contributed to the Tuition Guaranty Trust Fund.[3] Plaintiff elected to take advantage of this exemption, under protest, in order to avoid the additional requirements imposed on it under the other exemption for which it qualified. With leave of Court, plaintiff then filed a supplemental complaint alleging that this exemption also violated the Equal Protection Clause because it required plaintiff to contribute to the Tuition Guaranty Trust Fund while other, allegedly similarly situated exempt institutions, were not subject to this requirement.

Summary Judgment Standard

Both plaintiff and defendants have moved for summary judgment. Under Rule 56(c) of the Federal Rules of Civil Procedure, summary judgment is appropriate when "there is no genuine issue as to any material fact . . . and the moving party is entitled to judgment as a matter of law." In Celotex Corp. v. Catrett, 477 U.S. 317 (1986), the Supreme Court held that this burden could be met if the moving party demonstrates "that there is an absence of evidence to support the non-moving party's case." Id. at 325. At that point the burden shifts to the non-moving party to go beyond the pleadings and present specific evidence giving rise to a triable issue. In reviewing a motion for summary judgment, the Court must construe all

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[3] Section 20-3-250.3(a)(15) grants an exemption to any college or university that confers both associate and baccalaureate or higher degrees, that is accredited by the Southern Association of Colleges and Schools, College Division, that is operated in a proprietary status, that provides a $200,000 surety bond, and that contributes to the Tuition Guaranty Trust Fund pursuant to Code Section 20-3-250.27.

factual inferences in the light most favorable to the non-moving party. Palmer v. BRG of Georgia, Inc., 874 F.2d 1417, 1422 (11th Cir. 1989). Nevertheless, "the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986) (emphasis in original).

The Parties' Contentions

Defendants contend that the classifications under the Act are rationally related to the legitimate state goal of protecting students from institutions that may be financially or academically unsound, and that the Act therefore does not violate the Equal Protection Clause. Specifically, defendants argue that the additional requirements imposed on plaintiff, which are not imposed on other exempt institutions, are justified by the "heavy nepotism" present at the institution and the fact that plaintiff has a closed, non-rotating board of trustees personally selected by plaintiff's founder and president, Dr. Sid Williams. There is no dispute that plaintiff practices some degree or nepotism. The record establishes that Williams' wife, daughter, son-in-law, and sister-in-law are all employed by plaintiff as high level administrators or faculty. In addition, plaintiff either employs or has employed the daughter, niece, and two other relatives of Williams' sister-in-law, and two nephews of his son-in-law. It is also undisputed that plaintiff's board of trustees is non-rotating, and that its original members were hand-picked by Williams.

Plaintiff, on the other hand, contends that by any rational measure, including date and fact of accreditation, level of degrees offered, date of charter or years in existence, and financial stability, it is similarly situated to other institutions that are exempt from the burdensome

requirements imposed on it under the Act. Therefore, plaintiff asserts, the imposition of these additional regulations unconstitutionally denies it the equal protection of the laws. Plaintiff's specific claims are summarized below.

First, plaintiff argues that the state has no legitimate interest in regulating nepotism at postsecondary educational institutions. In support of this argument, plaintiff contends that there is no evidence in the record that the existence of nepotism at such institutions poses any risk or danger to the public.

Second, plaintiff argues that even if guarding against nepotism in postsecondary schools were a legitimate state goal, the evidence in this case establishes that the additional regulations imposed on it were the result of personal bias and prejudice, not any concern about nepotism. Plaintiff points out that the state conducted no investigation into whether nepotism existed at other institutions before passing the Act, and that there is no existing state law or regulation prohibiting related persons from working at the same institution. "The only logical conclusion to be drawn [form this evidence]," according to plaintiff, "is that the General Assembly sought to single out Life [College] based upon fear, negative attitudes and/or prejudices."

Finally, plaintiff argues that even if the Act were found to have the legitimate purpose of regulating nepotism, it is still unconstitutional because it fails to advance that purpose. Plaintiff points out that on its face the Act says nothing about nepotism, and that plaintiff would be subject to the Act's requirements regardless of whether nepotism existed at the school. Therefore, plaintiff argues, the legislature could not have reasonably concluded that the legislation would serve its intended purpose.

Discussion

The Equal Protection Clause provides that: "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. const. amend. XIV § 1. This provision "is essentially a direction that all persons similarly situated should be treated alike." City of Cleburne v. Cleburne Living Center, 473 U.S. 432, 439 (1985).

Generally, legislation challenged under the Equal Protection Clause "is presumed to be valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate state interest." Id. at 440. The parties agree that this rational basis test is the applicable standard of review in this case.[4]

"Under the rational basis test, the primary issues are: *first,* whether the government has the power or authority to regulate the particular area in question; and *second,* whether the method the Government has chosen to accomplish this goal bears a rational relation to the ultimate objections." Cash Inn of Dade County, Inc. v. Metropolitan Dade County, 938 F.2d 1239, 1241 (11th Cir. 1991). The Court will address each of these issues as they apply to the facts of this case.

As to the first issue, the Court rejects plaintiff's contention that the state has no legitimate interest in regulating private colleges that practice nepotism. The

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[4] An analysis requiring strict scrutiny is substituted for the rational basis test where the statute interferes with the exercise of a fundamental right or operates to the disadvantage of a suspect class. City of Cleburne, 473 U.S. at 439. Plaintiff does not allege the existence of any fundamental right or a suspect class, so the rational basis test is the appropriate standard of review.

state clearly has an interest in protecting the public from academically or financially unsound education institutions, and there is expert evidence in the record, which was also considered by the legislature, that supports a legislative finding that nepotism within an institution may tend to cause such problems.[5] Therefore, the Court concludes that regulation of nepotism in private colleges is a legitimate state goal.

Second, the Court also finds that the Act bears a rational relation to this legitimate goal. It is true that the Act nowhere defines or even mentions nepotism, and that plaintiff would be subject to the additional regulations regardless of whether it practiced nepotism. Nevertheless, the evidence is undisputed that the limited exemption provided in O.C.G.A. § 20-3-250.3(a)(10) was intended to cover and in fact covers only two colleges -- plaintiff and the Savannah College of Art and Design -- both of which

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[5] Dr. Janie Smith, former director of the Division of Nonpublic Postsecondary Education in the Georgia Department of Education and coordinator for private college and university standards, expressed her concerns about nepotism in memoranda circulated to legislators and in testimony before a legislative study committee, as well as in her deposition in this case. In her memoranda and testimony, Dr. Smith stated her opinion that disagreements between an institution's governing board and a family-dominated central administration could lead the institution to disband. She also stated that having to deal with members of the same family sometimes made it difficult for students to resolve complaints at the institutional level and could also lead to questions of academic integrity involving such things as inappropriate changing of grades.

are essentially family-run institutions.[6] Furthermore, there is no evidence in the record that nepotism is practiced at any college that qualifies for a full exemption under the Act.

Thus, the Act does not treat plaintiff differently from other, similarly situated schools. Instead, the Act targets plaintiff and one other family-run institution for additional regulatory oversight, requiring each to post a bond and to contribute to the Tuition Guaranty Trust Fund. Under the rational basis test, "the legislation must be sustained if there is any conceivable basis for the legislature to believe that the means they have selected will tend to accomplish the desired end." Cash Inn of Dade, Inc., 938 F.2d at 1241. By imposing these additional regulations on the two institutions in the state known to practice nepotism, the Georgia legislature could have reasonably believed that it was achieving its goal of protecting students form financial or academic problems potentially stemming from such nepotism.

The Court concludes that the Act does not deny plaintiff the equal protection of the laws. Therefore, the Court denies plaintiff's motion for summary judgment and grants defendants' motion for summary judgment.

Summary

The Court DENIES plaintiff's request for oral argument [#40-1]; DENIES plaintiff's motion for summary

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[6] Plaintiff objects that it would only be entitled to the limited exemption even if it did not practice nepotism. However, the question before the Court is whether, under the existing facts, the statute violates plaintiff's equal protection rights, not whether it would violate those rights under some other, hypothetical set of facts.

judgment [#39-1]; and GRANTS defendants' motion for summary judgment [#37-1].

IT IS SO ORDERED, this 27 day of March, 1996.

Marvin H. Shoob, Senior Judge
United States District Court
Northern District of Georgia

APPENDIX B - JUDGMENT OF THE UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF GEORGIA ATLANTA DIVISION ENTERED MARCH 28, 1996

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

LIFE COLLEGE, INC.,	:	
	:	
Plaintiff,	:	
	:	CIVIL ACTION NO.
vs.	:	
	:	1:92-cv-2654-MHS
WILLIAM C. MANGUM, JR., in his official capacity as Director of the Nonpublic Postsecondary Education Commission, et al.,	:	
	:	
Defendants.	:	

JUDGMENT

This action having come before the court, Honorable Marvin H. Shoob, United States District Judge, for consideration of defendants' motion for summary judgment, and the court having granted defendants' motion, it is

Ordered and Adjudged that the plaintiff recover nothing, and that defendants recover the plaintiff their costs of this action.

Date at Atlanta, Georgia, this 28th day of March, 1996.

Luther D. Thomas, Clerk

By:_____
Evelyn Rivera
Deputy Clerk

Prepared, Filed, and Entered
in the Clerks Office
March 28, 1996
Luther D. Thomas, Clerk

By:_____
Evelyn Rivera
Deputy Clerk

APPENDIX C - OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT FILED NOVEMBER 16, 1994

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 96-8528
Non-Argument Calendar

D.C. Docket No. 1:92-CV-2654-MHS

LIFE COLLEGE, INC.,

Plaintiff-Appellant,

versus

WILLIAM C. MANGUM, JR., in his official capacity as Director of the Nonpublic Postsecondary Education Commission; STEPHEN DOUGHERTY, in his official capacity as Executive Director of the Nonpublic Postsecondary Education Commission; NONPUBLIC POSTSECONDARY EDUCATION COMMISSION,

Defendants-Appellees.

Appeal from the United States Court
for the Northern District of Georgia

(October 9, 1996)

Before DUBINA, CARNES and BARKETT, Circuit Judges.

PER CURIAM:

AFFIRMED. See 11th Cir. R. 36-1.[1]

"Costs taxed against plaintiff-appellant."

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[1]11th Cir. R. 36-1 provides:

When the court determines that any of the following circumstances exists:

(a) judgment of the district court is based on the findings of fact that are not clearly erroneous;

(b) the evidence in support of a jury verdict is sufficient;

(c) the order of an administrative agency is supported by substantial evidence on the records as a whole;

(d) summary judgment, directed verdict, or judgment on the pleadings is supported by the record;

(e) judgment has been entered without a reversible error of law; and an opinion would have no precedential value, the judgment or order may be affirmed or enforced without opinion.

Judgment Entered: October 9, 1996
For the court: Miguel J. Cortez,

Clerk

By:

_____
Deputy Clerk

ISSUED AS MANDATE: 11/7/96

APPENDIX D - O.C.G.A § 20-3-250.3

O.C.G.A. § 20-3-250.3 Educational institutions exempted from application of part.

(a) The following education and postsecondary educational institutions are exempted from this part except as expressly provided to the contrary:

(1) Institutions exclusively offering instruction at any or all levels from preschool through the twelfth grade;

(2) Education sponsored by a bona fide trade, business, professional, or fraternal organization, so recognized by the commission, solely for that organization's membership or offered on a no-fee basis, not granting degrees;

(3) Education solely avocational or recreational in nature, as determined by the commission, and institutions, not granting degrees, offering such education exclusively;

(4) Postsecondary educational institutions established, operated, and governed by this state, its agencies, or its political subdivisions, as determined by the commission;

(5) Any flight school which holds an applicable federal air agency certificate issued by the administrator of the Federal Aviation Administration;

(6) Nonpublic, nonprofit, postsecondary educational institutions which demonstrate annually to the satisfaction of the commission that their purposes are solely to provide programs of study in theology, divinity, religious education, and ministerial training, and that they do not

grant postsecondary degrees of a nonreligious nature and that such institutions:

(A) Accept no federal or state funds; and

(B) Accept no student who has a federal or state education loan to attend such institutions;

(7) Subject to the requirements of subsection (c) of Code Section 20-3-250.6, nonpublic law schools not accredited by the American Bar Association which are subject to the regulations and standards established by the Georgia Supreme Court for such schools;

(8) Nonpublic postsecondary educational institutions conducting postsecondary activity on the premises of military installations located in this state which are solely for military personnel stationed on active duty at such military installations, their dependents, or Department of Defense employees and other civilian employees of that installation;

(9) A school where the total instructional program is review or preparation for a specific examination and where the student's occupational training already makes the student eligible to sit for the examination;

(10) Subject to the requirements of subsection (c) of Code Section 20-3-250.6, any nonpublic, nonprofit college or university granting baccalaureate degrees whose principal office and campus are located in this state and its related graduate and professional programs, which have been in existence ten or more years as a nonpublic, nonprofit college or university prior to July 1, 1989, and is accredited by a national or regional accrediting agency recognized by the United States Department of Education;

(11) Subject to the requirements of subsection (c) of Code Section 20-3-250.6, any nonpublic institute of paper science and technology offering graduate degrees and which is allied with a public research university and accredited by a national or regional accrediting agency recognized by the United States Department of Education;

(12) Subject to the requirements of subsection (c) of Code Section 20-3-250.6, any liberal arts college or university whose principal office and campus are located in this state and its related graduate and professional programs, if any, which was chartered prior to 1955 as a nonpublic, nonprofit, degree-granting institution, provided that it is accredited by a regional or national accrediting agency recognized by the United States Department of Education;

(13) Any institution offering only education or training in income tax theory or income tax return preparation when the total contract price for such education or training does not exceed $400.00, provided that the total charges incurred by any student for all instruction, other than instruction which is solely avocational or recreational in nature as provided in paragraph (3) of this subsection, do not exceed $400.00 in any one calendar year;

(14) Subject to the requirements of subsection (c) of Code Section 20-3-250.6, any nonpublic medical school accredited by the Liaison Committee on Medical Education and a national or regional accrediting agency recognized by the United States Department of Education; and

(15) Any college or university that confers both associate and baccalaureate or higher degrees, that is accredited by the Southern Association of Colleges and Schools, College Division, that is operated in a proprietary status, that provides a $200,000.00 surety bond, and that

contributes to the Tuition Guaranty Trust Fund pursuant to Code Section 209-3-250.27.

(b) Except as otherwise provided in subsection (a) of this Code section, any nonpublic postsecondary educational institution whose students participate in either state or federally funded student financial aid programs is specifically covered by this part.

(c) A postsecondary educational institution which is also regulated pursuant to the provisions of Title 43 shall be exempted only from the provisions of paragraph (2) of subsection (b) of Code Section 20-3-250.5, subsections (a) and (b) of Code Section 20-3-250.6, and Code Section 20-3-250.11.

(d) A postsecondary educational institution which has been granted an exemption from provisions of this part pursuant to paragraph (6) of subsection (a) of this Code section shall subsequently submit an annual statement to the commission which affirms that the institution continues to meet the requirements for exempt status as listed in paragraph (6) of subsection (a) of this Code section. The statement shall be submitted using a form provided by the commission. The commission may request information on the form concerning the names of programs of study offered and the titles of degrees, diplomas, certificates, or other credentials conferred. Institutions which qualify for exempt status may include class components or subjects which are nonreligious in nature but relate to the church related work being performed by the institution. The commission may also authorize an annual visitation by the commission staff to the institution.

(Code 1981, Sec. 20-3-250.3, enacted by Ga. L. 1990, p. 1166, Sec. 3; Ga. L. 1991, p. 980, Sec. 1; Ga. L. 1991, p.

1165, Sec. 1; Ga. L. 1992, p. 2198, Sec. 1; Ga. L. 1992, p. 2615, Sec. 2; Ga. L. 1994, p. 1282, Sec. 2.)

APPENDIX D - O.C.G.A. § 20-3-250.6 (1996).

O.C.G.A. § 20-3-250.6 Minimum standards for educational institutions.

(a) In establishing the criteria required by paragraph (2) of subsection (b) of Code Section 20-3-250.5, the commission shall observe and shall require compliance with the following minimum standards:

(1) A nonpublic postsecondary educational institution must be maintained and operated, or, in the case of a new institution, it must demonstrate that it can be maintained and operated in compliance with the following minimum standards:

(A) That the quality and content of each course or program of instruction, training, or study are such as may reasonably and adequately achieve the stated objective for which the course or program is offered;

(B) That the institution has adequate space, equipment, library and physical facilities, instructional materials, and personnel to provide education of good quality;

(C) That the education and experience qualifications of directors, administrators, supervisors, and instructors are such as may reasonably ensure that the students will receive education consistent with the objectives of the course or program of study and that each director and instructor shall satisfactorily meet educational qualifications and other requirements established by the commission;

(D) That the institution provides students and other interested persons with a catalog or other written description containing information describing the programs

offered; program objectives; length of program; schedule of tuition, fees, and all other charges and expenses necessary for completion of the course of study; cancellation and refund policies consistent with standards adopted by the commission; prior year's enrollment, graduation, and job placement rates; and such other material facts concerning the institution and the program or course of instruction as are reasonably likely to affect the decision of the student to enroll therein, together with any other disclosures specified by the executive director or defined in the rules and regulations of the commission; and that such information is provided to prospective students prior to enrollment;

(E) That upon satisfactory completion of training, the student is given appropriate educational credentials by such institution indicating that such course or courses of instruction or study have been satisfactorily completed by said student;

(F) That adequate records are maintained by the institution to show attendance, progress, or grades and that satisfactory standards are enforced relating to attendance, progress, and performance;

(G) That the institution is maintained and operated in compliance with all pertinent ordinances and laws, including rules and regulations, relative to the safety and health of all persons upon the premises;

(H) That the institution is financially sound and capable of fulfilling its commitments to students;

(I) That neither the institution nor its agents engage in advertising, sales, collection, credit, or other practices of any type which are false, deceptive, misleading, or unfair;

(J) That the chief executive officer, trustees, directors, owners, administrators, supervisors, staff, and instructors are of good reputation and character and that each institution has an education director who meets the requirements established by the commission for such position which requirements shall be substantially related to the predominant course offerings at that institution;

(K) That the student housing owned, maintained, or approved by the institution, if any, is appropriate, safe, and adequate and meets all local fire, safety, and health codes;

(L) That the institution has and maintains a reasonable and proper policy, consistent with standards adopted by the commission, for the refund of the unused portion of tuition, fees, housing or dormitory fees, and any other charges in the event a student enrolled by the institution fails to begin a course or withdraws or is discontinued therefrom prior to completion, which policy shall take into account those costs to the institution that are not diminished by the failure of the student to enter or complete the course of instruction;

(M) That the institution maintains a policy of allowing any student a minimum of 72 hours from the date of the contract or agreement to cancel any contract or rescind any agreement to become a student at the institution and that in the event of any such cancellation or rescission, the student shall receive a refund of the total tuition and fees, if any, paid to the institution at the time of or in connection with the execution of the contract or agreement and that such policy shall be a clearly stated part of any written contract or agreement required of students attending the institution; and

(N) That the institution posts continuously in a conspicuous place a notice, in such form as required by the

commission, which sets forth the procedures for filing a complaint with the commission for any alleged violation of this part.

(2) An applicant for an agent's permit shall be an individual of good reputation and character and shall represent only a nonpublic postsecondary educational institution or institutions which meet the minimum standards established in this Code section and the criteria established under paragraph (2) of subsection (b) of Code Section 20-3-250.5.

(b) In lieu of the criteria set forth in subsection (a) of this Code section, or in addition thereto, the executive director, for good cause shown and with the advice of the commission, may amend, modify, substitute, or alter the terms of such criteria as necessary and advisable because of the specialized nature and objective of the operation of the postsecondary educational institution.

(c) Institutions otherwise exempt from certain provisions of this part under paragraphs (7), (10), (11), (12), and (14) of subsection (a) of Code Section 20-3-250.3 shall be required to meet the standards of financial soundness and being capable of fulfilling commitments to students as provided in subparagraph (a)(1)(H) of this Code section, and, because of such requirement, each such institution shall provide the commission with audited financial statements as performed by an independent certified public accountant and at such times as the commission shall require. The commission may impose a fee to be paid by such institutions to offset the cost of receiving and reviewing such audited financial statements. Institutions otherwise exempt from certain provisions of this part under subsection (c) of Code Section 20-3-250.3 shall be required to submit annual financial reports to the commission when applying for annual renewal of exemption or authorization using the reporting format provided by the commission. In

addition thereto, institutions otherwise exempt from certain provisions of this part under paragraph (10) of subsection (a) of Code Section 20-3-250.3 shall be subject to the requirements of Code Sections 20-3-250.8, 20-3-250.10, and 20-3-250.27. The reports to the Governor and to the General Assembly required by subsection (h) of Code Section 20-3-250.27 shall include a summary of the commission's findings from its review of audited financial statements required by this subsection.

(d) The commission shall be authorized to adopt rules pertaining to the content and format of financial reports to be submitted by postsecondary educational institutions applying for authorization to operate in this state.

(Code 1981, Sec. 20-3-250.6, enacted by Ga. L. 1990, p. 1166, Sec. 3; Ga. L. 1991, p. 687, Sec. 2; Ga. L. 1992, p. 1657, Sec. 3; Ga. L. 1992, p. 2615, Sec. 3; Ga. L. 1993, p. 91, Sec. 20; Ga. L. 1994, p. 1282, Sec. 4.)

APPENDIX F - O.C.G.A. § 20-3-250.27 (1996).

O.C.G.A. § 20-3-250.27 Tuition Guaranty Trust Fund.

(a) It is the purpose of this Code section to create a trust fund from participation fees from postsecondary educational institutions to enable such institutions, collectively, to protect students against financial loss when a postsecondary educational institution closes without reimbursing its students and without completing its educational obligations to its students.

(b) (1) Effective on July 1, 1992, the Tuition Guaranty Trust Fund is created. The participation fees received by the commission from postsecondary educational institutions pursuant to the provisions of subsections (c) and (d) of this Code section shall be deposited in a special account designated "Tuition Guaranty Trust Fund" and shall be held in trust by the board of trustees provided for in paragraph (2) of this subsection for the purpose of carrying out the provisions of this Code section. The money in the fund may be invested by said board of trustees in any bonds and other securities of agencies of the government of the United States and bonds and other securities of state and local governments. The earnings from such investments shall be deposited to the credit of the Tuition Guaranty Trust Fund and shall be available for the same purposes as other money deposited in the fund.

(2) The fund shall be administered by the Board of Trustees of the Tuition Guaranty Trust Fund. The board of trustees shall consist of five members of the commission designated by majority vote of the commission, but one of such members shall be a representative of a nonpublic nondegree-granting postsecondary educational institution, and one of such members shall be a representative of a nonpublic degree-granting postsecondary educational institution. The five members of the

commission who are so designated shall serve for such terms of office as members of the board as the commission shall establish by rule or regulation. The commission shall appoint one of the members so designated as chairman of the board. The executive director shall also serve as executive director and secretary of the board. Three members of the board must vote in agreement in order for the board to take official action. The commission may by rule or regulation provide for another member of the commission to serve in the place of a member of the board who is absent from a meeting of the board.

(c) (1) All postsecondary educational institutions operating in this state, except those which are exempt from the provisions of this Code section pursuant to Code Section 20-3-250.3, shall participate in the tuition guaranty fund. Those postsecondary educational institutions specified in paragraphs (10) and (15) of subsection (a) of Code Section 20-3-250.3 and in subsection (c) of Code Section 20-3-250.3 shall participate in the tuition guaranty fund.

(2) Postsecondary educational institutions which were authorized to operate in this state prior to July 1, 1990, and which have maintained continuous authorization in this state since July 1, 1990, and institutions which have been continuously licensed since July 1, 1990, pursuant to the provisions of Title 43 and were authorized by the commission prior to July 1, 1992, shall participate in the fund and shall not be required to provide surety bonds as provided in Code Section 20-3-250.10; provided, however, that any surety bond provided by an institution before July 1, 1992, shall remain in effect for one full year after the effective date of such surety bond.

(3) Postsecondary educational institutions which are currently authorized to operate in this state and

which were first authorized to operate in this state on or after July 1, 1990, shall participate in the fund for five years of continuous authorized operation and shall provide the surety bonds required in Code Section 20-3-250.10; provided, however, that such surety bonds shall no longer be required of any such institutions which have maintained two full years of continuous authorized operation to the present. Any institution which fails to maintain continuous authorization in this state, and which subsequently applies for reinstatement of its certificate of authorization, must provide a surety bond for two full years following reinstatement of authorization.

(d) (1) In addition to any other fees required by this part, the commission shall by regulation establish fees to be paid annually by postsecondary educational institutions for participation in the tuition guaranty fund. The fees shall be based on gross tuition collected during a year by each postsecondary educational institution. If an institution has not operated for a full year, its participation fee shall be based initially on its projected gross tuition for the first full year of operation. At the conclusion of the first year, the fee for that year shall be adjusted to reflect actual gross tuition. The annual fee established by the commission shall be sufficient, when added to the earnings of the fund, to create a balance in the fund of at least $500,000.00 by July 1, 1997. The board of trustees shall notify the commission when the fund balance exceeds $500,000.00, and, except as otherwise provided in paragraph (2) of this subsection, upon receiving such notification, the commission shall cease collection of participation fees from postsecondary educational institutions which have contributed to the fund for at least five years. The commission, upon notification from the board of trustees, shall reestablish collection of participation fees from such participating postsecondary educational institutions at any time the fund balance is less than $475,000.00. At such time, fees shall be collected from

such participating institutions according to a schedule adopted by the commission based on gross tuition in amounts sufficient to raise the fund balance to $500,000.00.

(2) Each postsecondary educational institution which is first authorized to operate in this state after July 1, 1992, and is required to participate in the fund for five years of continuous authorized operation under the provisions of paragraph (3) of subsection (c) of this Code section shall be required to pay participation fees for such period of time notwithstanding the amount in the tuition guaranty fund. If the balance in the fund exceeds $500,000.00, participation fees shall be collected from each such institution according to the fee schedule adopted by the commission pursuant to paragraph (1) of this subsection.

(3) If earnings from investments, participation fees required under paragraph (2) of this subsection, and claims experience ever cause the balance in the fund to exceed $1,025,000.00, the commission, upon being notified by the board of trustees, shall make refunds to postsecondary educational institutions which have participated in the fund for at least five years, so that the fund balance is reduced to $1 million. Any such refund shall be determined by the commission in proportion to the total participation fees paid by a postsecondary educational institution until the time of the refund; provided, however, no reimbursement shall be made to any postsecondary educational institution whose students have been reimbursed from the fund or from bond forfeiture as provided in subsection (g) of this Code section. The commission shall establish by regulation the time and other procedures and requirements for making any such refund, but refunds shall be issued no more than once during a fiscal year.

(e) The annual cost incurred by the commission and by the board of trustees in administering the Tuition Guaranty Trust Fund, including expenses incurred in collecting from defaulting postsecondary educational institutions the amounts paid from the fund to or on behalf of students pursuant to the provisions of subsection (g) of this Code section, shall be paid from the fund; provided, however, such annual administrative costs shall not exceed 2.5 percent of the participation fees collected from postsecondary educational institutions during the fiscal year. The commission shall issue a report annually to each postsecondary educational institution participating in the fund. The report shall provide an evaluation of the financial condition of the fund and a summary of claims paid or other expenditures from the fund during the immediately preceding fiscal year.

(f) The commission shall establish by regulation a late payment fee for the failure of a postsecondary educational institution to pay its participation fee at the time established by regulation of the commission for the payment of such fees. An application for authorization to operate or for the renewal thereof may be denied under Code Section 20-3-250.12 for failure to pay participation fees. Late payment fees shall be paid into the fund. Any authorization to operate may be revoked, suspended, or made conditional under Code Section 20-3-250.13 for failure to pay participation fees.

(g) (1) Except as otherwise provided in paragraph (2) of this subsection, in the event a postsecondary educational institution participating in the fund goes into bankruptcy or ceases operations without fulfilling its educational obligations to its students or without reimbursing its students, the board of trustees may reimburse from the fund valid claims of students for tuition paid to that institution in accordance with guidelines and procedures adopted by regulations of the board. If a

student who attended the defaulting postsecondary educational institution received financial aid under either a state or federal student loan program, the board shall direct payment to the financial institution or other entity who made the loan to the student, rather than directly to the student. As a condition of receiving reimbursement from the fund, the student and the financial institution or other entity which made the loan to the student shall agree to subrogate their rights of recovery against the defaulting postsecondary educational institution to the board of trustees; provided, however, that if the reimbursement from the fund is insufficient fully to cover the amount due the student or the entity making the loan to the student, then such student or entity shall retain the right of recovery against the defaulting institution for the unreimbursed amount. Payments from the fund shall be made by warrant of the director of the Office of Treasury and Fiscal Services on the order of the board of trustees.

(2) Until surety bonds are no longer required of a participating postsecondary educational institution under the provisions of paragraph (3) of subsection (c) of this Code section, the reimbursement of tuition to students or to financial institutions or other entities on behalf of students, in the event of the default of the postsecondary educational institution, shall be accomplished by bond forfeiture proceedings and not from the tuition guaranty fund unless the full amount of the bond is paid in reimbursements and such amount is insufficient to cover all reimbursements. If a student, financial institution, or other lending entity is entitled to reimbursement of tuition paid for a term which concluded before the expiration of the surety bond, the reimbursement shall be accomplished by bond forfeiture proceedings and not from the tuition guaranty fund unless the full amount of the bond is paid in reimbursements and such amount is insufficient to cover all reimbursements.

(3) If the board of trustees pays a claim to or on behalf of a student of a defaulting postsecondary educational institution or if such a claim is paid as a result of a bond forfeiture, the authorization to operate of the defaulting postsecondary educational institution shall be automatically revoked as of the date of such payment, if the authorization to operate has not been previously revoked by the commission pursuant to other provisions of this part. If a defaulting postsecondary educational institution reimburses the fund for any claims paid on behalf of its students, the commission shall be authorized to issue a new authorization to operate to such postsecondary educational institution if the commission finds that the institution is then qualified to operate as a postsecondary educational institution. Such an institution shall provide the surety bond required in Code Section 20-3-250.10 for two years and shall pay participation fees to the tuition guaranty fund for five years as provided in paragraph (2) of subsection (d) of this Code section.

(4) If at any time the money available in the tuition guaranty fund is insufficient to satisfy tuition reimbursement claims then pending against the fund, the board of trustees may require each participating postsecondary educational institution to pay a special assessment to the fund. The special assessment shall be in addition to the participation fee provided for in paragraph (1) of subsection (d) of this Code section but the total amount which may be collected in such special assessments in any one fiscal year shall not exceed either the total amount paid during the immediately preceding fiscal year in participation fees or $100,000.00, whichever is greater. The maximum amount that may be paid from the fund in claims on behalf of the students of any single defaulting postsecondary educational institution is $250,000.00, regardless of the fact that total claims may exceed that amount.

(5) As an alternative to paying claims to or on behalf of students of a defaulting postsecondary educational institution, the board of trustees may arrange for another postsecondary educational institution to complete the educational obligations to the students of the defaulting postsecondary educational institution, provided that the program offered by the other institution is substantially equivalent to the program for which the students had paid tuition and provided, further, that attendance at the other institution does not cause unreasonable hardship or inconvenience to the students. The commission shall have the authority to adopt rules or regulations which shall govern the board of trustees in the administration of the provisions of this paragraph. As a part of any such program, the board of trustees may reimburse the other postsecondary educational institution from the fund for expenses incurred by the institution in providing educational services for the students of the defaulting postsecondary educational institution, but such expenses shall not include the payment of tuition on behalf of such students.

(6) It shall not be necessary to claim a loss or damage pursuant to the provisions of Code Section 20-3-250.14 in order for the board of trustees to pay claims to or on behalf of students pursuant to the provisions of this Code section. Procedures and requirements for filing claims under this Code section shall be as provided by rules or regulations adopted for that purpose by the commission.

(7) Any person aggrieved by a decision of the board of trustees to pay or deny a claim pursuant to the provisions of this Code section may appeal to the commission. A decision of the board of trustees shall be in writing and shall be sent by certified mail to the claimant and to the owner of the defaulting postsecondary educational institution. If the whereabouts of the owner of the defaulting postsecondary educational institution is not

known and cannot reasonably be ascertained by the board of trustees, a notice of the decision shall be published in the legal organ of the county where the student claimant attended the defaulting postsecondary educational institution or a facility of such institution. The appeal to the commission shall be commenced by filing a written notice of such appeal to the commission within 30 days after receiving the written decision of the board of trustees. Within 30 days after receiving a notice of appeal, the commission shall affirm the decision of the board of trustees, modify and affirm the decision of the board of trustees, or overrule the decision of the board of trustees. Any person aggrieved by the action of the commission shall have the right to judicial review pursuant to the provisions of Code Section 20-3-250.16. The commission shall adopt rules or regulations providing procedures for the conduct of appeals from the board of trustees, but such rules or regulations shall be consistent with the provisions of this paragraph.

(h) The board of trustees shall issue a biennial report to the Governor and members of the General Assembly providing a summary of the financial condition of the fund and claims experience during the preceding biennium. Such reports shall be issued during the regular session of the General Assembly held during each even-numbered year beginning in 1994.

(i) The tuition guaranty fund shall be exempt from all license fees or income, franchise, privilege, occupation, or other taxes levied or assessed by the state or by any county, municipality, or other political subdivision of the state. Any payment of claims or refund of participation fees from the tuition guaranty fund shall not be exempt from taxation unless such payment or refund is exempt from taxation pursuant to the provisions of law independent of the provisions of this part.

(Code 1981, Sec. 20-3-250.27, enacted by Ga. L. 1992, p. 2615, Sec. 4; Ga. L. 1993, p. 1402, Sec. 18; Ga. L. 1994, p. 1282, Sec. 11; Ga. L. 1995, p. 10, Sec. 20.)